APPENDIX A

(1) In 1934, Trustee Bank—filed against Petitioner Cleveland, residing in California, and her mother, Mrs. Doebler, residing in Baltimore—a tricky bill of complaint asking that the Ninth Paragraph Trust Corpus under the Eddy will—actually appraised in 1925 at testator's death at $1,400,000—be held to be the mere par value of certain shares of the Eddy Family Holding Company—the par being $41,666. Now the joker was that if the District Court had entered such a judgment—then this Trustee was absolved from liability for negligent loss of all (or up to) the surplus of over $1,300,000.

(2) Upon Petitioner's objection, Trustee filed in March, 1935, an amended bill admitting that

(a) The assets appraised at $1,400,000 behind the par value holding company shares (par value $41,666) were in law the trust estate corpus

(b) Admitting heavy losses—and

(c) Asking exoneration because of the depression (R. 16 *et seq.*).

(3) Thereupon, defendants in said amended bill, Doebler, life tenant, and Cleveland, Residuary Legatee, (under paragraph Ninth of the Eddy Will Trust) filed answers and on April 11, 1936, the District Court entered (prepared by Trustee) an accounting order upon the determination (and admission of all parties) that the $1,400,000 of holding company assets behind the one-third of the small par value shares—were the corpus of the Ninth Paragraph Trust Estate—for which Trustee should account.

R. 16, *et seq.*

(4) Thereupon a lengthy accounting was made and filed by Respondent Trustee covering the first eleven years of the life estate (1925 to 1936).

See R. 235 *et seq.* Exhibits 3, 4 and 5.

(5) These Exhibits and supplements for years 1937 and 1938—showed

(a) An admitted loss by Trustee of about $125,000 in Petitioner's one-sixth residuary estate.

The admitted losses were in corporate stocks, bonds, accounts receivable and real estate.

(6) Petitioner filed exceptions to the Trustee's account *on only the admitted losses in the corporate stocks* (R. 122 to 129)—

nearly all of which losses occurred in the rising (general) market price period of 1925 to 1929 inclusive.

(7) At the final hearing (after the life tenant's (Doebler) death in the spring of 1938) the Trustee attempted to justify the admitted corporate stock losses—by blaming them all on the depression of 1931 to 1934, etc.

The principal witness for the Trustee was R. Perry Shorts, Trustee's President, called by Trustee.

R. 603.

(8) Petitioner and defendant Cleveland—had the moral and legal right to full cross examination—since Trustee had the burden of proof under Michigan Law "to justify admitted losses"—see

Davidson v. Young, 290 Mich. 266.

(9) The auditors found—after all credits were given Trustee for any gains in some stocks and other asset

values—that still Petitioner Cleveland had lost $125,000 from 1925 to 1938, at life tenant's death, such losses being principally in the speculative corporate stocks of local Saginaw Corporations doing business at Trustee Bank—and in the general rising corporate stock market value period of 1925 to 1930. See testimony of Auditor Collins, R. 335 *et seq.*—never questioned by Trustee Bank.

(10) The Auditors appointed by Trustee also found that in the life estate period of 1925 to 1938—an accumulation of $181,000 of income was due Petitioner Cleveland's mother, life tenant Doebler, which had not been distributed by the Trustee (which controlled the family holding corporation, C. K. Eddy and Sons) in the form of annual dividends by the directors elected by Trustee Bank.

R. 311 *et seq.*

(11) With this record before it—the District Court suddenly at the end of the proofs—announced that

(a) The consented to by all parties and fully performed accounting order of April 11, 1936 (R. 117) making the valuable $1,400,000 of assets of the family company (and not the 41,666 par value shares) and trust corpus under paragraph 9 of the Eddy will—

would be set aside—that the corporate entity of C. K. Eddy and Sons (all $125,000 of the par value shares were owned by Testator Eddy at his death in 1925) would be resumed—and therefore that—

(b) Mrs. Doebler, the life tenant, (Doebler's administrator Van Auken) could draw none of her admitted balance of unpaid income of $181,000 — See judgment of February 7, 1939, Par. 9, R. 188.

(c) That Petitioner Cleveland had lost nothing because she still had her one-sixth of the small par value holding company shares $20,866 par value—actual appraised value of assets behind them of $616,000 at testator's death in 1925—and

therefore, she was entitled to no relief in this testamentary final accounting suit commenced in 1934—with the very peculiar bill of complaint to have the Court rule (against non-resident women life tenant and residuary legatee) that the corpus of the Ninth Paragraph Trust was only $41,666 par value of family holding company shares. See bill, prayer (g) R. 5.

(12) And just to make the decision "complete" from the Trustee Bank's viewpoint, the District Court did two other things, namely:

(a) It required Petitioner Cleveland—

because she had dared to ask the Trustee Bank to justify the Trustee's admitted heavy corporate stock losses in the years following the testator's death in 1925, and preceding the depression year of 1931 (as she had the right to do as a defendant—290 Mich. 266)

To pay all the Trustee's counsel fees in the (1) fraud action of administrator Van Auken, involving her mother's sale in 1920, during the testator's life time, at $700,000 of her family holding shares—which the secret set of books found after Mrs. Doebler's death, showed was worth over $1,400,000—and upon which basis the defrauding Arthur Eddy had paid estate taxes to the Government (R. 1013—showing total estate of $4,300,000).

(b) And the District Court's judgment of February 7, 1939 undertook to whitewash the heavy

losses the Charitable Trust (created by paragraph Tenth of Mr. Eddy's will) had suffered—

when the Charitable Trust was not in Court at all to defend itself—

and neither the Attorney General of Michigan nor the Saginaw County Prosecuting Attorney ever were notified of the proceedings—although the Statutes of Michigan provide they shall represent all charitable trusts in all legal proceedings.

See judgment of February 7, 1939, Par. 2, R. 186.

(13) The Court of Appeals affirmed without opinion (117 Fed. (2d) 1009) this District Court Judgment on February 14, 1941—allowing by its mandate the Trustee the usual Appellee's counsel fee of $20.

(14) Petitioner Cleveland asked on rehearing, that at least she be given what remained of her one-sixth of the actual holding company assets—so she would not be left at the mercy of this Trustee Bank—with a minority stock interest of one-sixth of these small par value shares of the family holding company—tied up in a perpetual trust—under the control of this Trustee Bank. See Mr. Eddy's will, Pars. 9 to 12, R. 8 to 15.

(15) This rehearing the Court of Appeals denied—although Petitioner pointed out that the Trustee Bank controlled C. K. Eddy and Sons, had filed answers and pleadings actually asking the dissolution of C. K. Eddy and Sons, and the distribution to Petitioner of the "assets represented by the shares of stock so held under paragraph Ninth of said will be distributed in accordance herewith and as prayed for by said plaintiff Trustee" (R. 157).